

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GABRIEL PINEIDA,

No. C 12-1171 WHA (PR)

Plaintiff,

**ORDER DENYING MOTION FOR  
PRELIMINARY INJUNCTION;  
DIRECTING MARSHAL TO SERVE  
DEFENDANT MILLNER;  
INSTRUCTIONS TO CLERK**

v.

E. EVANS; CHARLES D. LEE;  
KATHLEEN WALL; CARL  
MILLNER; R. RODRIGUES; LOY  
MEDINA; M. SEPULVEDA,

Defendants.

(Docket Nos. 29, 30)

Plaintiff, an inmate at Salinas Valley State Prison, filed this pro se civil rights action pursuant to 42 U.S.C. 1983. All but one defendant, Carl Millner, have been served and have filed a motion to dismiss the complaint on administrative exhaustion grounds. Plaintiff has not yet opposed that motion. Rather, he has filed a motion for a preliminary injunction and a motion to have defendant Millner served at a new address.

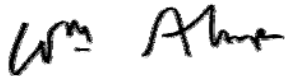
Prior to granting a preliminary injunction, notice to the adverse party is required. *See* Fed. R. Civ. P. 65(a)(1). A temporary restraining order ("TRO") may be granted without written or oral notice to the adverse party or that party's attorney only if: (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or the party's attorney can be heard in opposition, and (2) the applicant's attorney certifies in writing the efforts, if any, which have been made to give notice and the reasons supporting the claim

1 that notice should not be required. *See* Fed. R. Civ. P. 65(b). Plaintiff has neither notified the  
2 defendants of his request nor submitted the required certification of his efforts to do so and why  
3 they have failed. In addition, in light of the evidence presented by defendants that plaintiff has  
4 not exhausted his claims, there is no likelihood of plaintiff's success on the merits of his claims.  
5 Accordingly, the motion for a preliminary injunction (docket number 29) is **DENIED**.

6 Plaintiff's motion to have defendant Millner served at a new address (dkt. 30) is  
7 **GRANTED**. The clerk shall issue summons and the United States Marshal shall serve, without  
8 prepayment of fees, a copy of the complaint in this matter with all attachments thereto, a copy  
9 of the order of service and accompanying notice, and a copy of this order upon defendant Carl  
10 Millner at La Vida Prairie Medical Group, 4455 West 117th Street, Suite #102, Hawthorne,  
11 California 90250. Defendant Carl Millner shall comply with the provisions of the Order of  
12 Service; he may also opt to join in the pending motion to dismiss filed by the other defendants.

13 **IT IS SO ORDERED.**

14 Dated: November 19, 2012.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

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